

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 186/2021(S.B.)**

Vijay Bhaurao Manjare,
Aged 57 years, Occ. Service,
R/o Jaistambha Chowk, Badnera,
District Amravati.

Applicant.

Versus

1. State of Maharashtra,
Through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai-32.
2. Divisional Commissioner Amravati,
Commissioner office, Camp, Amravati.
3. Collector Amravati,
Camp, Amravati.

Respondents.

Shri R.V.Shiralkar, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated:- 19th June, 2024.

JUDGMENT

Heard Shri R.V.Shiralkar, learned counsel for the
applicant and Shri S.A.Sainis, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

The applicant was appointed as Junior Clerk w.e.f. 19.12.2001. The applicant has passed the departmental examinations i.e. Sub-Service Departmental (SSD) examination in January 2005 and Revenue Qualifying Examination in April 2005. One Shri R.N.Kale who has not passed any departmental examination was granted promotion on the post of the Awwal Karkoon. The respondents have granted promotion to Shri R.N.Kale, because he has completed 45 years of age and as per the Rule he is exempted from passing the examinations. The applicant and other similarly situated employees approached to this Tribunal by filing O.A.No.956/2017 with connected O.As.. All these O.As. were decided by this Tribunal on 24.02.2020. This Tribunal directed the respondents to fix the seniority of the applicants / respondent nos.5 to 12 in O.A.No.956/2017 with connected O.As.. This Tribunal has passed the following order-

ORDER

The respondent no.3 the Collector, Amravati is directed to fix the seniority of the respondents nos. 5 to 12 (in O.A. 956/2017) and of the applicants in O.A. Nos.789/2018, 790/2018, 802/2018, 803/2018, 804/2018, 805/2018, 809/2018, 810/2018, 811/2018 & 857/2018, as per the directions issued by the Full Bench of M.A.T. in O.A.No.354/2015

within a period of three months from the date of this order and thereafter shall decide the issue of deemed date. After compliance of the order by the respondent no 3, the respondent no.2 shall prepare divisional seniority list as per the directions issued by the Full Bench of M.A.T. The respondent no.2 shall fix the seniority at the division level within a period of three months from the date of preparation of seniority list by the respondent no.3. The O.As. stand disposed of. No order as to costs.

3. Thereafter, the Divisional Commissioner, Amravati in appeal passed the order directing the Collector, Amravati to grant deemed date of promotion to the applicant on the post of Senior Clerk/Awwal Karkoon. After passing the order dated 05.05.2017 by the Divisional Commissioner, Amravati, the applicant was granted deemed date of promotion on the post of Awwal Karkoon along with Shri R.N.Kale w.e.f. 03.08.2005.

4. On 21.08.2018, the Collector Amravati made application for review of the order. The Divisional Commissioner, Amravati reviewed the order dated 01.10.2018. The said order is challenged before this Tribunal for the following reliefs-

A. Hold and declare that action of the respondent no. 2 in rejecting the objection of the applicant taken to the seniority list is illegal and bad in law. Further declare that applicant is

entitled for deemed date of promotion as 3.8.2005 of Mr.R.N. Kale.

B. Quash and set aside order dated 1.10.2018 passed by the respondent no. 2 in review being illegal and restored the order dated 5.5.2017, in the interest of justice.

INTERIM RELIEF: *During the pendency of the original application, direct the respondents not take any action on the basis of incorrectly and illegally prepared seniority list or to revert the applicant and make recovery against him.*

5. The respondents have strongly objected the O.A. on the ground that there were some complaints by the Union etc. Therefore, the Collector made review application. In the said review application, the order granting deemed date of promotion to the applicant was reviewed by the Divisional Commissioner, Amravati by the impugned order. The applicant was not entitled to get deemed date of promotion w.e.f. 03.08.2005. Therefore, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for the applicant has pointed out the order passed by the Divisional Commissioner, Amravati dated 05.05.2017. It is observed in the order that applicant and others approached to this Tribunal and as per the direction of this Tribunal, the case of the applicant was decided. It was observed that the applicant had passed SSD

Examination and also Revenue Qualifying Examination. Therefore, the applicant was granted deemed date of promotion w.e.f. the date of 03.08.2005 on which the promotion was granted to Shri R.N.Kale. The learned counsel for the applicant has submitted that for promotion on the post of Clerk, the employee has to pass the SSD examination and also Revenue Qualifying Examination. The applicant had passed the SSD Examination and also Revenue Qualifying Examination. Shri R.N.Kale had not passed the SSD Examination. He has granted the exemption on the ground that he had completed 45 years of age. As per the Rule, there is nothing wrong on the part of respondents to grant exemption to Shri R.N.Kale. The Rule itself is clear that the employee who completes 45 years of age, he/she is entitled to get exemption from passing the departmental examination. This Tribunal has observed that applicant has also passed SSD Examination and Revenue Qualifying Examination. Therefore, the applicant is also entitled to get promotion along with Shri R.N.Kale w.e.f. 03.08.2005 on which date the promotion was granted to him.

7. There was no reason for the Divisional Commissioner, Amravati to review the order. Only some complaints are made and therefore order is reviewed. No any opportunity of hearing was

given to the applicant. The complaints made by some persons/ Union was not investigated by the respondents.

8. On 05.03.2021, this Tribunal has granted stay to the impugned order. The order passed by the Divisional Commissioner, Amravati dated 05.05.2017 is perfectly legal and proper. The Collector has also passed the order as per the direction given by this Tribunal. There was no reason for the Divisional Commissioner, Amravati to review the order. Hence, the following order is passed-

ORDER

1. The O.A. is allowed.
2. The impugned order dated 01.10.2018 passed by the respondent no.2 Divisional Commissioner, Amravati is hereby quashed and set aside.
3. Order passed by the Divisional Commissioner Amravati i.e. respondent no.2 dated 05.05.2017 is hereby restored.
4. The respondents are directed to implement the order dated 05.05.2017.
5. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 19/06/2024.
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 19/06/2024.
